

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

KYLE RICHARD,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-17-1126-M
)	
JOHN B. FOX, Warden,)	
)	
Respondent.)	

ORDER

On March 26, 2018, United States Magistrate Judge Charles B. Goodwin issued a Report and Recommendation in this action brought pursuant to 28 U.S.C. § 2241, seeking a writ of habeas corpus. The Magistrate Judge recommended that the Petition for Writ of Habeas Corpus be dismissed without prejudice for lack of jurisdiction. Petitioner was advised of his right to object to the Report and Recommendation by April 16, 2018. On April 3, 2018, petitioner filed his objections.

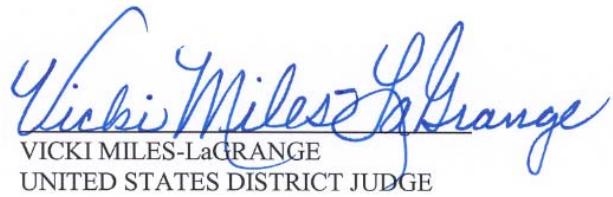
In his objections, petitioner objects to the Magistrate Judge's finding that he is time-barred from bringing a § 2255 motion. Petitioner asserts that because the Supreme Court's opinion in *Dean v. United States*, 137 S. Ct. 1170 (2017), was decided on April 3, 2017, pursuant to 28 U.S.C. § 2255(f)(3), he had one year from that date to proceed with a § 2255 motion. Section 2255(f)(3) provides that the 1-year period of limitations shall run from "the date on which the right asserted was initially recognized by the Supreme Court and made retroactively applicable to cases on collateral review". 28 U.S.C. § 2255(f)(3). However, the Supreme Court did not expressly make *Dean* retroactively applicable to cases on collateral review, and courts that have considered this issue have concluded that *Dean* is not retroactively applicable to cases on collateral review. *See United States v. Wilcoxson*, No. 3:10-cr-00487-BR, 2018 WL 912253, at *3 (D. Or. Feb. 15, 2018)

(listing cases). Accordingly, the Court finds that § 2255(f)(3) would not apply and that petitioner is time-barred from bringing a § 2255 motion.

Accordingly, upon de novo review, the Court:

- (1) ADOPTS the Report and Recommendation [docket no. 7] issued by the Magistrate Judge on March 26, 2018, and
- (2) DISMISSES this case without prejudice for lack of jurisdiction.

IT IS SO ORDERED this 19th day of April, 2018.



VICKI MILES-LAGRANGE
UNITED STATES DISTRICT JUDGE